
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

LEHI ROLLER MILLS CO., INC.,

Plaintiff,

vs.

CAL-AGREX, INC.,

Defendant.

**MEMORANDUM DECISION
& ORDER**

Case No. 2:08CV291DAK

This matter is before the court on Plaintiff Lehi Roller Mills' Motion for Partial Summary Judgment on its unjust enrichment claim, and Defendant Cal-Agrex Inc.'s Motion for Relief Pursuant to Federal Rule of Civil Procedure 56(f). The motions are fully briefed. Because the court concludes that a hearing would not materially assist in its consideration of the motions, the court renders the following order based on the pleadings, memoranda, and other materials submitted by the parties as well as the law and facts relevant to the motions.

DISCUSSION

Cal-Agrex's Rule 56(f) motion seeks addition time to conduct discovery relevant to the unjust enrichment claim and its related affirmative defenses. This case is in its initial stages. The case has not had a case management conference and has no scheduling order in place. The parties have not exchanged initial disclosures and have served only preliminary discovery. Cal-Agrex argues that discovery is necessary before the court can determine the totality of the

circumstances regarding the unjust enrichment claim. Cal-Agrex also seeks discovery on its affirmative defenses prior to the court's ruling.

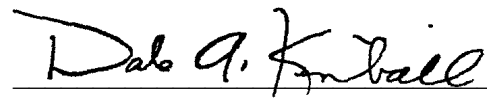
The court agrees that discovery should proceed prior to the court ruling on Lehi Roller Mills' motion for partial summary judgment. Because the court finds that further discovery could impact the court's ruling on the unjust enrichment claim at issue in the motion for partial summary judgment, the court grants Cal-Agrex's Rule 56(f) motion. Accordingly, Lehi Roller Mills' motion for partial summary judgment is denied without prejudice, to be renewed after discovery is completed.

CONCLUSION

Based on the above reasoning, Plaintiff Lehi Roller Mill's Motion for Partial Summary Judgment on its unjust enrichment claim is DENIED WITHOUT PREJUDICE to be renewed, if appropriate, at the close of discovery; and Defendant Cal-Agrex Inc.'s Motion for Relief Pursuant to Federal Rule of Civil Procedure 56(f) is GRANTED.

DATED this 12th day of August, 2009.

BY THE COURT



DALE A. KIMBALL
United States District Judge